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Dawn M. Odrowski, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5421

Dear Ms. Odrowski:

I am writing on behalf of John Kerry for President, Inc. ("the Committee") and its treasurer, in response to the Commission's finding of reason to believe in the above-referenced matter. In an effort to address all of the issues raised in the Commission's Factual and Legal Analysis this response is divided into three parts:

- The facts surrounding the loans obtained by Senator Kerry for use in his campaign.
- An analysis of how Commission rules applied to these loans.
- A discussion of the manner in which the loans were reported.

The Commission has already rejected the premise of the original complaint, which is that the actual value of Senator Kerry's personal residence was lower than that indicated by the Committee when the loans were taken. Once it considers the

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additional facts presented in this response, the Commission should be able to close this matter without any further action.[1]

A. The Facts Surrounding the Loans Obtained By Senator Kerry

On three occasions in mid-December 2003, Senator Kerry personally borrowed money, the bulk of which he subsequently lent to John Kerry for President, Inc. These were "bridge" loans, drawn from lines of credit in anticipation of a larger loan that would be secured against his interest in his personal residence.

The Committee's disclosure reports correctly present the particulars of these three transactions:

- On December 12, 2003, he drew $500,000 from a personal line of credit with Mellon Bank, at a variable interest rate starting at 5.5%. The line of credit was personally guaranteed.

- On December 15, 2003, he drew $350,000 from a home equity line of credit with Citizens Bank, at a variable interest rate starting at 3.5%. Obtained by Senator Kerry for personal purposes in August 1999, and with a limit of $450,000, the line of credit was secured against his own interest in his personal residence.[2]

- On December 19, 2003, he drew an additional $250,000 from a personal line of credit with Mellon Bank, at a variable interest rate starting at 5.5%. The line of credit was personally guaranteed.[3]

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[1] With this response, the Committee produces documents that contain personal financial information. In one instance, on the document presented at Tab B, the Committee has redacted account number information. We respectfully request that the Commission treat all of the documents produced with this response confidentially, and withhold them from the public record when this matter has been concluded.

[2]

[3] With the proceeds obtained through these transactions, Senator Kerry made three loans to his campaign. On December 12, 2003, he loaned $500,000 to John Kerry for President, Inc., at a variable interest rate starting at 5.5%. On December 15, 2003, he loaned $350,000 to John Kerry for

When Senator Kerry obtained these three loans, he was in the process of obtaining a larger loan from Mellon Trust of New England ("Mellon Trust") that would be secured by his half of the value of his personal residence. That loan became effective on December 24. However, Senator Kerry did not borrow against the entirety of his interest in his personal residence on December 24. Again, the reports filed by the Committee with the Commission accurately present the particulars of the transactions:

- On December 24, 2003, Senator Kerry borrowed $3,000,000 against his personal residence from Mellon Trust. The interest rate started at 3.125%, and was to be adjusted to the One Month London Interbank Offered Rate (LIBOR) plus two percent.

  Of the $3,000,000 borrowed, $15,849.79 was used to pay settlement costs. $445,129.65 was used to pay off the August 1999 Citizens Bank line of credit, including the $350,000 drawn for campaign purposes on December 15. $751,054.76 was used to pay off the December 12 and December 19 Mellon Bank loans. The remaining $1,787,965.80 was disbursed to Senator Kerry.

  Accordingly, the Committee disclosed a loan from Mellon Trust to Senator Kerry in the amount of $2,904,870.35. This amount equaled $3,000,000 minus the $95,129.65 borrowed to repay funds drawn against the August 1999 Citizens Bank line of credit. *See*, e.g., 11 C.F.R. 104.8(g)(1) (requiring committees to disclose "[t]he amount of the loan that is used in connection with the candidate's campaign").

- On January 5, 2004, Senator Kerry borrowed an additional $3,400,000 against his personal residence from Mellon Trust. Again, the interest rate started at started at 3.125%, and was to be adjusted to the One Month London Interbank Offered Rate (LIBOR) plus two percent.[4]

President, Inc., at a variable interest rate starting at 3.5%. On December 19, 2003, he loaned $250,000 to John Kerry for President, Inc., at a variable interest rate starting at 5.5%.

[4] On December 24, 2003, Senator Kerry loaned $1,787,965.80 to John Kerry for President, Inc., at a variable interest rate starting at 3.125%. On January 5, 2004, he loaned $3,400,000 to John Kerry for President, Inc., at an interest rate of 3.125%.

The Factual and Legal Analysis raises the possibility that Senator Kerry may have received an excessive contribution, because the sequence of the loan transactions may have caused him to have borrowed in excess of his interest in his personal residence for a brief period of time. It also raises the possibility that Senator Kerry's interest in the property may have been encumbered further by the above-referenced $450,000 line of credit obtained from Citizens Bank in August 1999, as well as by an $820,000 mortgage placed on the property in favor of Citizens Bank in October 1996, thus prohibiting him from borrowing to the extent that he did.

The facts permit none of these possibilities. The entire loan agreement with Mellon Trust was structured so that the proceeds would first be used to pay off all outstanding loans – secured and unsecured. The closing documents made this clear. For example, the standard HUD settlement statement shows that the payoff of both the Mellon and Citizens Bank loans were necessary parts of the transaction.

Toward this end, on December 17, Senator Kerry signed all necessary paperwork to request that the Citizens Bank mortgage be discharged and the account closed.

Accordingly, the proceeds from the December 24 loan of $3 million were immediately used to pay all outstanding loans, including those secured against Senator Kerry's house. These loans included the $750,000 borrowed from Mellon Bank on December 12 and December 19. They also included the $350,000 borrowed from Citizens Bank on December 15. Finally, they included $95,129.65 borrowed from Citizens Bank on the August 1999 line of credit. As to the October 1996, $820,000 mortgage, Citizens Bank confirmed on December 12, 2003 that it had already been discharged.

Thus, the hypothesis that Senator Kerry's borrowing exceeded his interest in his personal residence is incorrect. The December 24 Mellon Trust loan was intended to replace – and indeed did replace – all of the previous loans. Because payoff of the previous loans was a necessary part of the closing, there was no period of time in which his borrowing exceeded his equity in the collateral, even "for a short duration." Factual and Legal Analysis at 10.

The claim of excessive borrowing relies further on three other erroneous hypotheses:

First, Senator Kerry did not borrow $6,400,000 on December 24. As the Factual and Legal Analysis speculates, Senator Kerry *did* receive "the $6.4 million Mellon Trust loan as two loans on the dates reported in the Schedule C-1s," and thus did not encumber "his share of the property for more than $6.4 million at any one time." Factual and Legal Analysis at 10 n.7. As discussed above, Senator Kerry drew only $3,000,000 on the loan on December 24; he did not draw the remaining $3,400,000 until January 5. The Mellon Trust loan was established to allow multiple withdrawals, with the note specifically providing for staged withdrawal by the Senator.

Second, the date reflected on some of the loan documents is not the date on which the loan became legally effective and binding. Though many of the loan documents recite December 19, 2003, federal law did not permit the loan to become effective until after a three business day rescission period had passed.

Thus, the actual date that the loan became legally binding on the parties was December 24.

Third, the Factual and Legal Analysis relies on when the discharges of the mortgages were formally recorded – not on when Senator Kerry repaid them, and not on when he authorized their discharge. These are details to which the lender attends after closing; a borrower is normally unaware of them entirely. Here, it is undisputed that the outstanding loans secured by mortgages were paid in full, that Senator Kerry executed all of the necessary paperwork to discharge them, and that the relevant parties were obliged to do so. It cannot be the case that the lawfulness of his actions rests on how quickly the lender or its counsel, without the Senator's knowledge or participation, took the ministerial actions necessary to memorialize transactions that had already occurred.

There can be no doubt that Mellon Trust had a perfected security interest corresponding to Senator Kerry's ownership of his personal residence – Mellon Trust controlled the flow of funds. It could not and did not release funds to Senator Kerry until (1) he had executed the paperwork necessary to close the Citizens Bank account; (2) it knew that the settlement attorney was obliged to send the funds necessary to pay off the Citizens Bank loan directly to Citizens Bank; and (3) it knew that Senator Kerry would receive no amount greater than that remaining after the previous loans were repaid. The same would be true of any other loan. To suggest that Senator Kerry somehow used the same property to benefit simultaneously from the Mellon Trust loan and from the earlier loans is without merit.

B. The Loan from Senator Kerry to His Campaign Met the Requirements of Commission Regulations

It is beyond question that Senator Kerry could borrow funds personally from Mellon Trust and use some of the proceeds to fund his campaign. Under the applicable Commission rule, the loan must have been made in accordance with applicable law and under commercially reasonable terms, and the lender must make these types of loans in the ordinary course of its business.

The Factual and Legal Analysis raises two questions with respect to whether the Mellon Trust loan met this test. First, it questions whether the amount of the loan exceeded Senator Kerry's interest in the personal residence that collateralized the loan. Second, it questions the commercial reasonableness of the interest rate charged on the loan. The issue of collateralization is discussed at length above. Here, it need only be reiterated that Senator Kerry at no point used his $6.4 million interest in his house to benefit simultaneously from loans exceeding $6.4 million.

As to the interest rate, the Factual and Legal Analysis contrasts the higher interest rates for the earlier Mellon Bank and Citizens Bank loans with the 3.125% rate for the Mellon Trust loan, and hypothesizes that the Mellon Trust loan may not have been made on commercially reasonable terms. Yet such a contrast is inappropriate, given the varying natures and terms of the loans.

Different types of loans will bear different interest rates, based particularly upon risk and duration. The December 12 and December 19 Mellon Bank loans were unsecured, short-term loans, with no prepayment penalties. The Citizens Bank loan, while fully secured, contained no prepayment penalties. All three loans were lines of credit and would remain outstanding at the discretion of the borrower provided timely interest was paid.

In contrast, the December 24 Mellon Trust loan was a mortgage loan of certain duration, fully secured by property appraised at twice the value of the loan, and carrying significant penalties for prepayment. Thus, it is to be expected that the Mellon Trust loan would carry a significantly lower rate than the Mellon Bank loans, and a slightly lower rate than the Citizens Bank loan.

C. The Loan from Senator Kerry to his Campaign was Properly Disclosed to the Commission

Finally, the Commission's Factual and Legal Analysis questions whether the loan was properly reported. At the outset, it is worth noting that this loan was disclosed in the most public way possible – via press release and widespread press attention. The Kerry campaign went to considerable lengths to brief and educate reporters on the loan, providing details beyond those required to be reported. The Committee had no interest whatsoever in an incomplete or inaccurate disclosure.

Furthermore, the loan was properly reported to the Commission in all ways. Reporting procedures for loans made directly to a candidate are different from those that apply to loans made directly to a campaign committee. When a candidate borrows money and then loans the funds to his campaign, the transactions are reported in three ways:

- *First,* the committee must disclose the basic terms of the loan from the lender to the candidate on Schedule C-P-1 of its FEC report. It must show: (i) the date, amount, and interest rate of the loan; (ii) the name and address of the lending institution; and (iii) the types and value of collateral or other sources of repayment that secure the loan, if any.

- *Second,* the committee must itemize the amounts loaned to it by the candidate on Schedule A of its FEC report.

- *Third,* the committee must disclose its debt to the candidate on Schedule C of its FEC report.

The Committee met each of these requirements with precision. Nonetheless, the Factual and Legal Analysis questions three aspects of the Committee's reporting: (1) whether the correct date for the loan was reported; (2) whether the correct collateral amount was reported; and (3) whether Mrs. Heinz Kerry should have been listed as a co-endorser.

With respect to the proper date, as discussed above, the loan from Mellon Trust to Senator Kerry did not become effective until December 24, 2003 – the date used on the FEC report. Moreover, Senator Kerry did not borrow $6,400,000 on that date. Rather, he borrowed $3,000,000 on December 24 – $2,904,870.35 of which was for campaign purposes – and an additional $3,400,000 on January 5. As the Factual and Legal Analysis correctly surmises, because the loan was drawn in installments and because not all of the proceeds were intended to support his campaign, the Schedule

C-1 correctly shows this as two separate loans over two reporting periods. *See* Factual and Legal Analysis at 10 n.7.

The Committee likewise reported the correct value of the collateral. Nothing in the regulations or statute directly address the question of whether the value of the collateral should be the entire amount of the jointly-owned property, or the candidate's share of that property. Even the Factual and Legal Analysis says that the collateral amount could not have been greater than $6.4 million: "In light of the $12.8 million appraised value of the residence, up to 50% of the value of the property, $6.4 million, was available for Senator Kerry to use as collateral for a campaign loan ..." Factual and Legal Analysis at 9. For the Committee to have reported anything other than the value of Senator Kerry's share of the property as collateral would have sowed confusion on the public record.

Finally, the Factual and Legal Analysis concludes by raising the question of whether Mrs. Heinz Kerry was a co-endorser or guarantor on the Mellon Trust loan. In fact, she was not a co-endorser or guarantor of that loan. Generally, the purpose of having a spouse co-endorse or co-guarantee a loan is to permit the lender to have access to the collateral. *See, e.g.,* 11 C.F.R. 100.52(b)(4) ("A candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral ...")

Here, such a co-endorsement by Mrs. Heinz Kerry was unnecessary. As the Factual and Legal Analysis notes, Senator Kerry's residence is held by the T&J Louisburg Square Nominee Trust. He and his wife, in turn, are the beneficiaries of that trust as tenants by the entirety. Because the trust owns the house on behalf of Senator and Mrs. Heinz Kerry, it was not necessary for Mrs. Heinz Kerry to co-endorse or otherwise sign the loan documents; it was necessary only for the trust to permit the bank to encumber the house, which it did.

D. Conclusion

The subject of Senator Kerry's loans was a subject of intense public interest, which the Committee satisfied at the time with full disclosure of all the circumstances surrounding them. Unsurprisingly, it elicited a complaint from an ideologically hostile group. The Commission has already rejected the basic factual allegation made by that complaint. It now seeks information on unrelated matters, which the Committee has been pleased to provide.

The Committee respectfully requests the Commission to dismiss the complaint and take no further action.

Very truly yours,

Marc E. Elias

Enclosures